

**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF**

**SOUTH CAROLINA**

**DOCKET NO. 2017-305-E**

**IN RE:**

Request of South Carolina Office of )	
Regulatory Staff for Rate Relief to )	
SCE&G Rates Pursuant to )	
S.C. Code Ann. § 58-27-920 )	
_____ )	

**SCE&G’S MOTION TO DISMISS**  
**AND REQUEST FOR BRIEFING SCHEDULE**  
**AND HEARING ON MOTION TO DISMISS**

**INTRODUCTION AND SUMMARY**

South Carolina Electric & Gas (“SCE&G”) hereby moves under 10 S.C. Code Ann. Regs. 103-829 (2012) to dismiss the Request filed by the South Carolina Office of Regulatory Staff (the “ORS”).

The grounds for this motion are that the Request seeks relief which is illegal and unconstitutional and outside the statutory powers of the Public Service Commission of South Carolina (the “Commission”).

SCE&G requests that the Commission comply with its binding regulations and provide for this motion to be heard after due notice to ORS and other parties and to that end, establish a timetable for briefing and argument. Given that the Commission has set the Request for consideration during a specially called meeting less than 48 hours following the filing of the Request, SCE&G requests that it be given a reasonable time to brief the issues presented to the Commission by this Motion to Dismiss before any action on it or the underlying Request is taken.

As indicated in the attached Affidavit of Jimmy Addison, any action by the Commission to grant –even provisionally– the relief contained in this Request will by itself injure SCE&G financially and damage its ability to access the capital needed to maintain its utility system and provide service to its customers on reasonable terms.

For that reason, SCE&G specifically requests that the Commission take no action related to the Request until this motion can be heard and decided. To grant the relief requested while this motion is pending would be to deny SCE&G's motion without hearing or consideration in violation of SCE&G's rights under the Due Process Clauses of the South Carolina and United States Constitutions; S.C. Constitution Art. I, sec. 22; the South Carolina Administrative Procedure Act, S.C. Code Ann. § 1-23-310, the Commissions regulations including 10 S.C. Reg. Ann. 103-826, among other provisions.

#### **IDENTIFICATION OF THE COMPANY AND ITS REPRESENTATIVES**

1. SCE&G is a corporation duly organized and existing under the laws of the State of South Carolina, with its principal offices at 220 Operation Way, Cayce, South Carolina, 29033.

2. SCE&G is engaged in the business of generating, transmitting, and delivering electricity and providing electric service to the public for compensation. SCE&G owns and operates an integrated electric utility system that serves approximately 718,000 customers in 24 counties in central and southern South Carolina.

3. Corporate legal counsel for SCE&G in this proceeding are as follows:

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All correspondence and any other matters relative to this proceeding should be addressed to these representatives.

#### **GROUND FOR DISMISSAL**

4. The Request is unlawful and should be dismissed because it would unlawfully and unconstitutionally require the Commission to:
  - A. Ignore the clear dictates of a validly enacted, binding and enforceable statute, the Base Load Review Act ("BLRA"), that has been appealed and upheld by the South Carolina Supreme Court in multiple proceedings;
  - B. Violate the Commission's constitutional obligation and the oaths taken by its members which require the Commission to uphold and enforce the laws of the State of South Carolina unless and until those laws are ruled unconstitutional by the courts of the State;

- C. Abrogate multiple valid, legally binding and unappealed orders issued under the BLRA, including multiple revised rates orders that were issued after due notice to the public, written approval by ORS and the failure of any party to object to them or seek administrative review of them;
- D. Engage in legally prohibited retroactive ratemaking;
- E. Deny SCE&G in excess of \$445 million in annual revenue that is critically important to its financial health, potentially ruining the financial posture of the Company, without any record or opportunity for SCE&G to be heard;
- F. Establish insufficient, unjust, unreasonable, and confiscatory rates for SCE&G without any factual basis for finding that those rates are “fair and reasonable” or “just and reasonable” as is statutorily required in all ratemaking proceedings by the Commission (see S.C. Code Ann. §§ 58-27-810 *et seq.* and S.C. Code Ann. § 58-27-920) and by the Takings Clauses of the South Carolina and United States Constitutions;
- G. Violate SCE&G’s rights under the Due Process and Takings Clauses of the South Carolina and United States Constitutions;
- H. Unless rates are suspended under S.C. Code Ann. § 58-27-930, violate S.C. Constitution Art. I, sec. 22 by irrevocably depriving SCE&G of approximately \$37 million in lawfully-approved rate revenue per month without the opportunity to be heard;
- I. Violate the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, which requires a hearing on not less than thirty (30) days’ notice in all contested cases.

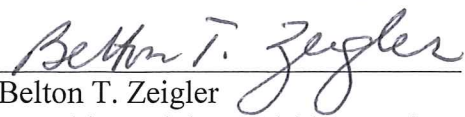


- J. Violate its own procedural regulations which require the Commission to provide an opportunity for answers to be filed to petitions and rules to show cause, and require applications involving rate matters to include information establishing the basis for the rates proposed. See 10 S.C. Reg. Ann.103-823, 103-826.
- K. Violate the terms of S.C. Code Ann. § 58-27-920 by issuing an order without any evidence of a preliminary investigation by the ORS or receiving the results of such investigation, or of any opportunity for SCE&G to respond to or rebut such matters;
- L. Base its decision on spurious allegations contained in the Request concerning concealment of material facts which allegations are not evidence and therefore provide no lawful or constitutional basis for issuing any order whatsoever affecting SCE&G's rates;
- M. Unlawfully reopen and relitigate valid, binding, resolved, and final orders of the Commission without a sufficient factual or lawful basis for collaterally challenging such orders.
- N. Act in a manner contrary to the mandate of the Supreme Court that administrative agencies cannot rule on the facial constitutionality of a statute, and may determine that a statute is unconstitutional as applied in a specific situation only after factual findings rendered following notice and an opportunity to be heard.

### CONCLUSION

For the reasons stated above, SCE&G requests that the Commission establish a timetable for briefing the issues raised in this Motion to Dismiss, set a date for hearing on this motion, and after hearing from the parties, dismiss the Request in this matter, and provide other relief as may be warranted in the premises.

Respectfully submitted,

  
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Company

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